Supreme Court, U.S.
FILED
SEP 22 1992
OFFICE OF THE CLERK

(1)

92-524

No.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

LILLIAN CRAM, PETITIONER,

VS.

HUGH S. MAXWELL, IN HIS CAPACITY AS EXECUTOR OF THE ESTATE OF JACQUELYN FAY MAXWELL, DECEASED, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

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62 pp

QUESTION PRESENTED FOR REVIEW:

If California's Court of Appeal just completely ignores facts showing violation of its own jurisdictional time-requirement for filing a Notice of Appeal, so that the Court can assert jurisdiction and reverse a trial court's Judgment awarding property to an unmarried cohabitor pursuant to an oral promise to make a Will, is California violating the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment?

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Opinions Delivered By Other Courts

Only one opinion has been delivered in this case, the opinion of the Court of Appeal of the State of California, First Appellate District, Division Two, and it is reprinted in the Appendix.

Jurisdiction

1. The Supreme Court of California denied Petitioner's Petition for Review, in that Court's Order filed June 24, 1992. The Order is reprinted in the Appendix.

2. There was no order respecting a rehearing in the Supreme Court of California. (There was a Petition for Rehearing in the Court of Appeal, which was denied on April 28, 1992. The Petition for Review was then filed

on May 18, 1992.)

3. Title 28, United States Code, Section 1257 confers jurisdiction on this Court to review the Order of the Supreme Court of California, and accordingly the Opinion of the Court of Appeal.

Constitutional Provisions, Statute, and Court Rule Involved

1. The Constitutional Provisions involved in this case are the Fourteenth Amendment to the Constitution of the United States, which reads, in pertinent part: ". . .nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. The Statute involved in this

case is California Code of Civil Procedure Section 1013(a), which reads: "In case of service by mail, the notice or other paper must be deposited in a post office, mail box, sub-post office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, at his office address as last given by him on any document which he has filed in the cause and served on the party making service by mail; otherwise at his place of residence. The service is complete at the time of the deposit, but any prescribed period of notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after the service of such document

served by mail shall be extended five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States, but such extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a of this code or notice of appeal."

3. The Court Rule involved in this case is California Rules of Court, Rule 2(a), which reads: "Except as otherwise provided by Code of Civil Procedure Section 870 or other statute or Rule 3, a notice of appeal shall be filed on or before the earliest of the following dates: (1) 60 days after the date of mailing by the clerk

of the court of a document entitled "notice of entry" of judgment or appealable order; (2) 60 days after the date of service of a document entitled "notice of entry" of judgment or appealable order by any party upon the party filing the notice of appeal, or by the party filing the notice of appeal; or (3) 180 days after the date of entry of judgment. For the purposes of this subdivision, a file-stamped copy of the judgment or appealable order may be used in place of the document entitled "notice of entry".

Statement Of The Case

This is a case involving two unmarried women who lived together for seven years until one of them died, in 1987. The survivor, LILLIAN CRAM, is the Petitioner here, and was the Plaintiff in the trial court, and

Respondent in the California Court of Appeal.

After the two women had lived together for two years, in a trial period, they decided to make their relationship permanent, and made an oral pooling agreement in 1982. In the agreement the decedent, JACQUELYN FAY MAXWELL, promised to leave the house in which they were living at her death, and the furniture and furnishings, and part of her financial assets, to Petitioner. Petitioner promised to provide certain specific personal services, including artworks, making clothes and fabric goods for the home, doing decedent's personal clothes shopping (decedent weighed 250 pounds), paying the telephone bill, and contributing half the mortgage and living expenses. The mortgage payments increased when the women moved

to a larger house, and Petitioner's share of the payments went up by more than half of what it had been.

This move to a larger house, and very large increase in Petitioner's share of the payments, occurred after the women made the permanent pooling agreement.

When the death occurred, only a 1980 Will surfaced, filed by Respondent, HUGH S. MAXWELL, the father of the decedent. It gave the promised items to him. LILLIAN CRAM sued, and after a trial, was awarded Judgment for the promised items.

HUGH S. MAXWELL appealed to the California Court of Appeal, but his Notice of Appeal was filed 64 days after his attorney was served with a file-stamped copy of the Judgment. (Both are copied from the Clerk's Transcript, in the Appendix.) However,

he served the Notice of Appeal 39 days before he filed it.

California law is completely settled that if the Notice of Appeal is not filed within the time limits provided by Court Rule, the Court of Appeal has no jurisdiction to consider the appeal.

Petitioner filed a Motion to Dismiss the Appeal, which was ultimately denied by only one Justice who did not take part in the decision or Opinion rendered by the Court of Appeal, and wrote no opinion himself. Petitioner CRAM filed a Petition for Writ of Mandate in the California Supreme Court attempting to have the appeal dismissed, but the Petition was denied summarily in an order signed by only one Justice. Petitioner raised the Due Process and Equal Protection issue in that Petition. (The pertinent part of page 5 of that

Petition is copied in the Appendix.)

The Court of Appeal then heard and decided the appeal, reversing the trial court, and basing its reversal on a California case which dealt with the special case of married people attempting only to dispose of community property. (Estate of Baglione, 65 Cal.2d 192 (1966).)

Petitioner CRAM filed a Petition for Rehearing in the Court of Appeal, raising the issue of denial of Due Process and Equal Protection by the assertion of jurisdiction by the Court of Appeal, when it really had none, and then using that jurisdiction to reverse a trial court's Judgment awarding property to Ms. CRAM. (The pertinent parts of pages 5 and 6 of that Petition for Rehearing are copied in the Appendix.) The Court of Appeal denied a rehearing in an order signed

by one Justice.

Petitioner CRAM then filed a Petition for Review in the California Supreme Court, again raising the Fourteenth Amendment issue of denial of Due Process and Equal Protection by the assertion of jurisdiction to deny Petitioner the Judgment resulting from her trial, when there was no jurisdiction to do so. (The pertinent part of page 7 of that Petition for Review, is copied in the Appendix.) The California Supreme Court, in bank, denied the Petition for Review on June 24, 1992.

Argument

This case is an example of a complete abuse of a Court's power over litigants, by the exercise of power when there is no jurisdiction to do so. The exercise of judicial power, merely because a Court dislikes the result in the trial court, is a gross and dangerous violation of Due Process and Equal Protection. It is dangerous because we live at a time when the trustworthiness of the entire judicial system is in question, especially by single persons like Petitioner, who choose to make a life with another single person. If Courts decide to disregard long established rules, merely to make policy decisions, Courts are seen merely as political instruments -- not to be trusted to make consistent decisions. Stare decisis is then seen as merely an old ritual form, with

no real value in the real world.

California law is completely settled, with regard to the jurisdictional requirement for filing a Notice of Appeal. Hollister Convalescent Hospital v. Rico, 15 Cal.3d 660 (1975). In this case, Respondent was just simply out-of-time in the filing of his Notice of Appeal.

The Court of Appeal paid no attention to the facts of the filing of the Notice of Appeal 64 days after the service of the file-stamped copy of the Judgment. Instead, the Court of Appeal merely recited that the clerk had served a notice-of-entry. The notice-of-entry was served within 60 days of the filing of the Notice of Appeal, but 11 days after Petitioner served the file-stamped copy of the Judgment. The proof of service of the file-stamped copy was filed in

the trial court, and was part of the Clerk's Transcript which was before the Court of Appeal, but that Court chose to totally ignore the whole issue.

In ignoring the issue of the service of the file-stamped copy of the Judgment, the Court of Appeal operated as if a fact just did not exist, when it did exist. The Court did this to achieve a result contrary to the result achieved by Petitioner in the trial court. This is just completely unfair, unlawful, and makes a travesty of the process of issuing judicial opinions. In effect, this complete evasion of the facts in the record constitutes a decision on an important question of federal law which has not been, but should be, decided by the Supreme Court. State Courts should not be allowed to so derogate individual rights to Due Process and

Equal Protection. If State Courts, or any Courts, are allowed to do so, then the judicial process is just a game, with Courts free to disregard the facts they do not want to consider.

(The decisions on the earlier Motion to Dismiss, and on the Petition for Writ of Mandate which followed it, were not res judicata on the issue of lack of jurisdiction. In re Christopher A., 226 Cal. App. 3d 1154, 1161 (1991); Rosato v. Superior Court, 51 Cal. App. 3d 190, 230 (1975); see Moles v. Regents of University of California, 32 Cal.3d 867, 871-72 (1982).)

When the Court of Appeal asserted its jurisdiction, it decided that there was no unjust enrichment in the case, and rested that decision on Estate of Baglione, supra, 65 Cal.2d at 198. But, in quoting from that case, the

Court of Appeal carefully and clearly intentionally omitted the words which show that that case only applies to married people, dealing with community property within the legal structure of their marriage. Compare the quotation in the third to last paragraph of the Court of Appeal's Opinion with the actual quotation from Baglione, supra, at 198.

This basis for decision is blatantly inapplicable, since the women in this case clearly could not be married under California law, and could not enjoy any of the privileges of marital status.

The Court of Appeal's finding of no unjust enrichment is also controverted by the facts: Respondent MAXWELL is unjustly enriched. He gets a house, at least, that he didn't pay for in any way, while Petitioner did

pay for part of it, trusting in the pooling agreement. After making the permanent pooling agreement, Petitioner CRAM moved with the decedent, and Petitioner's share of the mortgage and living expenses increased by more than half.

Conclusion

This Court does not seem to have spoken on this kind of action by a State Court -- blatant assumption of non-existent appellate jurisdiction in order to achieve a different result than the one had in the trial court. Petitioner respectfully asks this Court to grant certiorari in order to deal effectively, and with final authority, with such a violation of Due Process and Equal Protection.

For the reasons set forth, it is respectfully requested that the Supreme Court grant certiorari.

Dated: September 22, 1992.

JOHN ESHLEMAN WAHL

Attorney for

Petitioner

LILLIAN CRAM

APPENDIX

(COPY OF ORDER OF SUPREME COURT OF CALIFORNIA, FILED JUNE 24, 1992)

SUPREME COURT

FILED

JUN 24 1992

Robert Wandruff Clerk

Deputy

First Appellate District, Division Two,

No. A050567

S026769

IN THE SUPREME COURT OF CALIFORNIA

IN BANK

LILLIAN CRAM, Respondent

v.

HUGH S. MAXWELL, As Executor, Etc.,

Appellant

Respondent's petition for review DENIED.

Kennard

Acting Chief Justice

(COPY OF OPINION OF CALIFORNIA COURT OF APPEAL, FILED APRIL 7, 1992)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

FILED

APR -7 1992

Court of Appeal First App. Dist.

RON D. BARROW

By [illegible]

LILLIAN CRAM,

Plaintiff and Respondent,

vs.

HUGH S. MAXWELL, as Executor, etc.,

Defendant and Appellant.

A050567

(San Francisco Super.

Ct. No. 892-701)

Hugh S. Maxwell appeals from a judgment imposing a constructive trust over real and personal property in the estate of his daughter, Jacquelyn Fay Maxwell, in favor of respondent Lillian Cram. He contends the trial court erred in finding the conditions for imposition of such a trust were established by the evidence.

STATEMENT OF THE CASE

On June 1, 1988, respondent filed a complaint against appellant, as executor of the estate of Jacquelyn Fay Maxwell, for imposition of a constructive trust over the estate assets, breach of an oral promise to make a will leaving specified real and personal property to respondent, negligent failure to make such a will, breach of a partnership agreement, and recovery for the value of services

rendered to the decedent. First and second amended complaints were filed on May 5, 1989, and July 17, 1989, respectively. The case was tried to the court on March 6, 7 and 8, 1990. On May 21, the court issued its statement of decision finding that appellant held in trust and must convey to respondent as her sole property the real property at 436 San Bruno Avenue, San Francisco, and specified items of personal property including furniture, fixtures, furnishings and objets d'art at 436 San Bruno Avenue, stocks, bonds and bank accounts. Judgment was entered on June 4, notice of entry of judgment was mailed to the parties by the clerk of the superior court on June 15, and appellant's notice of appeal was filed on August 7.

STATEMENT OF FACTS

Jacquelyn Fay Maxwell died on September 29, 1987, in Ajijic, Mexico. She

was appellant's only child. At the time of her death, the decedent was unmarried and had no children; her mother had predeceased her, and appellant was her only surviving family member.

Respondent testified that she met the decedent in August, 1979. The two became close friends and in the spring of 1980, respondent moved into the decedent's house on Montezuma Street. Respondent had been living in a one-bedroom apartment at 24th and Valencia Streets for which she paid $185 a month for rent and utilities, with weekly expenses of $20 to $25 for food and household supplies. She had about $2,000 or $3,000 savings. When respondent moved into the decedent's house, the two agreed to split the mortgage payments, utilities and household supplies, with respondent paying the decedent $500 a month. In the fall of 1980, before undergoing surgery, the decedent

told respondent she had made a will leaving respondent the household furnishings and personal effects and had sent a copy to her father.

In June 1982, having determined that what had been a trial living arrangement was working out, respondent and the decedent made a permanent living agreement. As part of this agreement, respondent, a graphic artist, was to contribute a reasonable amount of art work to the decedent and the household, to do a reasonable amount of sewing for the decedent, and to do the decedent's personal shopping. The decedent was to leave respondent the house in her will, along with her bank accounts and securities to help respondent pay for repairs, insurance and taxes, the contents of the house, and the decedent's personal belongings except for certain items of jewelry the decedent wanted her

father to have. The decedent's bank account was used for the household expenses and the decedent managed the household accounts; respondent had access to the decedent's ATM card, and when the decedent was going out of town, she left respondent signed blank checks to use in her absence. Respondent's name was not put on the deed to the house because she did not have money to match the down payment, the decedent wanted to take the tax deductions, and the decedent was afraid her father would disinherit her if he learned of the living unit. In 1983, the decedent purchased a larger house at 436 San Bruno Avenue, and respondent's contribution to the household expenses was increased to $800.

Respondent testified she would not have entered the permanent relationship in June of 1982 if the decedent had not promised to will her the house and bank

accounts because she needed the security of knowing the arrangement was going to last for the rest of their lives. The two loved each other and wanted to make a lasting commitment to each other and spend the rest of their lives together.

In 1987, the decedent purchased a house in Ajijic, Mexico, which was held in joint tenancy with respondent. This property was not part of the pooling agreement but was a gift from the decedent to respondent. Upon the death of both the decedent and respondent, the property was to pass to appellant, a friend of the decedent's and two of respondent's siblings.

The decedent went to Mexico in the early summer of 1987. At the time of her death, one Jamie Cross was living with her in Ajijic. After her death, respondent used signed blank checks the decedent had left to withdraw most of the

money in the decedent's account and deposit it into her personal account. She also removed appellant's name from the deed to the Mexico property because she was afraid he would take the property away from her. The decedent left respondent her IRA account of $9,000. About four months after the decedent's death, Jamie Cross moved into the San Bruno Avenue home with respondent.

Several of the decedent's close friends testified that the decedent had told them she had left, or intended to leave, the San Bruno Avenue house to respondent and that the decedent wanted respondent to be protected and her life free from disruption if the decedent died. These friends were aware of the decedent and respondent's living unit agreement and the services respondent performed under it. One friend testified she had received Christmas cards from the two,

designed by respndent, every year since she met respondent in 1979.

Appellant testified that he and the decedent were very close, that she never indicated that she was going to share ownership of her properties with anyone else, and that she had occasionally referred to a will, recognizing that she was the sole heir of appellant's "fortune" and in return wanting appellant to be her heir in case her poor health caused her to die. Appellant testified he would have been upset if he had learned his daughter was a lesbian but would not have disinherited her.

After the death, appellant found the decedent's will where she had told him it would be. The will, dated September 22, 1980, nominated appellant as executor and left all the decedent's estate to him. A second sheet attached to the will listed various dispositions the decedent

hoped would be made, including leaving respondent the decedent's furniture, clothes and household belongings and allowing respondent to live in the house rent-free for at least six months. Appellant did not request rental payments for more than a year after the death. Respondent never indicated she had an interest in the San Bruno Avenue property before this action was filed.

On rebuttal, several of the decedent's friends testified that she was scared of or disliked her father.

DISCUSSION

The statute of frauds precludes oral contracts to make a will. (Former Code Civ. Proc., § 1624, subd. 6; see Prob. Code § 150.)[1] The trial court found appellant was estopped from relying

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[1] As the alleged agreement in the present case was made in 1982, it is governed by former Code of Civil Procedure section 1624, subdivision 6. (Prob. Code § 150.)

on the statute of frauds under the doctrine of quasi-specific performance set out in Porporato v. Devincenzi (1968) 261 Cal.App.2d 670. "The relief which may be granted in an action for quasi-specific performance of a contract to bequeath or devise property is the imposition of a constructive trust upon the property in favor of the promisee-plaintiff. It differs from the relief which would be available in a traditional specific performance action, and the remedy bears a different name, because the court cannot compel the making of a will [¶] The following elements are requisite to relief: (1) a contract sufficiently definite and certain in its terms to be enforced [citations]; (2) that the contract was just and reasonable [citations]; (3) that the plaintiff has performed his side of the bargain [citations]; (4) that the promisor has

failed to perform; and (5) that the contract was supported by adequate consideration. [¶] As in all cases which invoke equitable powers, the plaintiff must show (6) that her remedy at law is inadequate. [Citations.] . . . Where the contract was oral as is alleged here, the complaint must also allege (7) that the defendant is estopped from reliance upon the statute of frauds because failure to enforce the contract would result in either unconscionable injury to the plaintiff or unjust enrichment of the defendant. [Citations.]" (Id., at pp. 674-675; see Crail v. Blakely (1973) 8 Cal.3d 744, 751-755; Redke v. Silvertrust (1971) 6 Cal.3d 94, 101, cert. den. (1972) 405 U.S. 1041.)

In order to grant relief, the trial court was required to find the requisite elements supported by clear and convincing evidence; on appeal, this court must de-

termine whether the trial court's decision is supported by substantial evidence. (Crail v. Blakely, supra, 8 Cal.3d at p. 750; In re Marriage of Saslow (1985) 40 Cal.3d 848, 863.) If so supported, the trial court's findings may not be disturbed. (Ibid.)

The trial court found that the decedent and respondent entered into an agreement in June 1982 as part of which they jointly pooled their assets and income, the decedent made an oral promise to make a will leaving respondent all her interest in whatever residence the parties were occupying at the time of her death, the furniture, fixtures, furnishings, art work and her bank accounts and securities; and respondent promised to live with the decedent for the duration of her life and perform certain services for the decedent. The court further found respondent performed her part of the agree-

ment in reliance upon the decedent's promise.

Appellant contends the trial court erred in finding each of the elements required for relief under Porporato v. Devincenzi, supra, 261 Cal.App.2d 670. On most of these points -- such as whether the agreement was sufficiently certain and the consideration adequate -- our review of the record would lead to a conclusion that the trial court's findings were supported by substatial evidence. One point, however, is dispositive of this appeal: There is no evidence that failure to enforce the contract would result in either unconscionable injury to respondent or unjust enrichment of appellant. Indeed, the trial court made no express finding on this issue but rather focussed exclusively on the promise, consideration and respondent's performance.

The facts of Porporato v. Devincenzi, supra, illustrate the nature of the required showing of "unconscionable injury." In that case, the plaintiff learned her husband had been killed in action during World War II while she was visiting her family in Omaha with her infant son. Although she felt it would be best to remain with her family, her husband's father persuaded her to return to San Francisco with his grandson by promising that she could continue to live in his home and that he would devise the property to her. He also opposed her desire to obtain employment to augment her income and qualify for Social Security benefits, wishing her to remain at home and raise the child. Relying on his assurance that he would leave the property to her upon his death, the plaintiff did not seek employment and so did not acquire any savings or qualify for Social

Security benefits. Without her father-in-law's promise to devise her the property, she would have settled in Omaha and secured employment as a nurse. When the oral promise was not carried out and the plaintiff was left without resources as a result of her reliance on the promise, the court condluded the requisite showing of "unconscionable injury" had been established, allowing th plaintiff to raise an estoppel which defeated the statute of frauds. (261 Cal.App.2d at pp. 678-679.)

No such unconscionable injury was demonstrated by respondent in the present case. The trial court found respondent devoted her life to the living unit whe formed with the decedent and performed her promises until the decedent's death. But she did nothing after entering the arrangement, which included the decedent's promise to will her the house, that she

had not already done. Respondent had given up an inexpensive apartment and low living expenses when she first moved in with the decedent; was already performing the services found by the trial court at the time the permanent arrangement was entered; and was not required to, and did not, change her employment or give up any opportunities as a result of the agreement with the decedent. Indeed, respondent benefitted from her relationship with the decedent both by improving her circumstances during the decedent's lifetime and by the property she received through the decedent's will and the decedent's decisions to leave respondent her IRA and take title to the Mexico property in joint tenancy.

Respondent does not seriously contend appellant would be unjustly enriched by failure to enforce the alleged agreement. Unjust enrichment results if a party who

has received the benefits of the other's performance is allowed to rely upon the statute of frauds. (Monarco v. Lo Greco (1950) 35 Cal.2d 621, 623-624; Estate of Baglione, (1966) 65 Cal.2d 192, 198.) Appellant in this case takes the property in question through the decedent; just as respondent made no serious change in position in reliance on the "pooling agreement," the decedent received no benefit she was not already receiving by virtue of the parties' preexisting living arrangement. Nor does the case involve the kind of unjust enrichment present when the statute of frauds is invoked to deprive one who has changed his or her position in reliance upon a promise of the benefit of that promise. (Day v. Greene (1963) 59 Cal.2d 404, 410-411.) That appellant did not make mortgage payments and was not party to the "pooling agreement" (the only basis respondent

cites for finding unjust enrichment) is irrelevant. Appellant, the decedent's father, was the beneficiary of a will duly executed in 1980, after respondent's relationship with the decedent had begun. Enrichment is not unjust if it is not at the expense of one entitled to the property in question.

As stated by the Supreme Court in Estate of Baglione, supra: "Agreements restricting the right to alienate property or to make provision for any person by will are within the statute of frauds. [Citations.] [Plaintiff] contends, however, that she has alelged sufficient facts to estop the executor and devisees from relying on the statute of frauds. There is no estoppel unless [plaintiff] would suffer unconscionable injury or the devisees would be unjustly enriched if the oral contract were not enforced. [Citations.] . . . [Plaintiff] has not

alleged any serious change in position in reliance on the contract or that her contributions to the community . . . were different from those that she would have made in any event as [the cohabitant of the decedent]. [Citation.] Her injury is merely the loss of the benefit of a bargain within the statute. Nor will the devisees be unjustly enriched if the contract is not enforced. They take through [the decedent], and . . . he received no benefits under the contract. [Citations.] Equity 'will not enforce an oral agreement within the statute of frauds solely becasue not to do so would permit a defendant to assert the statute and thus avoid the parol obligation.' [Citations.]" (65 Cal.2d at pp. 197-198.)

As respondent failed to prove one of the elements essential to invoke the doctrine of quasi-specific performance, we need not discuss appellant's other claims

of error in the trial court's decision.

The judgment is reversed and the matter remanded to the trial court with instructions to dismiss the action. Appellant to recover costs on appeal.

/s/ Kline
Kline, P.J.

We concur:

/s/ Benson
Benson, J.

/s/ Peterson
Peterson, J.

(COPY OF PERTINENT PART OF PAGE 5, PETITION FOR WRIT OF MANDATE FILED IN CALIFORNIA SUPREME COURT DECEMBER 10, 1990)

"5. Respondent has a duty under the California Constitution, Article I, § 7, and under the United States Constitution, Fourteenth Amendment, not to deprive petitioner of due process of law, by entertaining and determining an appeal over which respondent has no jurisdiction. Such entertaining and determining of an appeal, over which respondent has no jurisdiction, is arbitrary, unreasonable, and in excess of jurisdiction."

(COPY OF PERTINENT PARTS OF PAGES 5 AND 6 OF PETITION FOR REHEARING, FILED IN THE CALIFORNIA COURT OF APPEAL APRIL 22, 1992)

"If the Court of Appeal makes an exception to the jurisdictional rule, Rule 2(a), in this case, then the Court wants to decide the merits against respondent [Petitioner in this Petition for Certiorari], even though the Court has no jurisdiction. Such judicial action, when there is no jurisdiction, deprives respondent of Due Process of Law and Equal Protection of the Laws, in violation of her rights under the Fifth and Fourteenth Amendments to the United States Constitution, as well as under Cal. Const. Art. I, §7. To exercise jurisdiction, where there is no jurisdiction, and then to change and reverse the decision of a lower court, is manifestly unfair and violative of Due Process."

(COPY OF PERTINENT PART OF PAGE 7,
PETITION FOR REVIEW FILED IN
CALIFORNIA SUPREME COURT MAY 18, 1992)

"Such an assertion of jurisdiction, when there is none, deprives respondent [Petitioner in this Petition for Certiorari] of Due Process of Law and Equal Protection of the Laws, grossly violating her rights under the Fifth and Fourteenth Amendments to the United States Constitution, as well as under Cal. Const., Art. I, §7."

(COPY FROM PAGE 284 OF CLERK'S TRANSCRIPT)

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Attorney for Plaintiff
LILLIAN CRAM

FILED
San Francisco
County Superior
Court
JUN 4 1990
DONALD W.
DICKENSON,
Clerk
BY B. HEYWOOD
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE CITY AND COUNTY OF SAN FRANCISCO

LILLIAN CRAM,
Plaintiff,
vs.
HUGH MAXWELL, etc.,
Defendant.

No. 892-701

SERVICE Of FILE-STAMPED COPY OF JUDGMENT

The attached file-stamped copy of the JUDGMENT AFTER TRIAL, in the above-entitled and numbered case, is served upon the attorney for defendant HUGH

S. MAXWELL, in accordance with the provisions of Rule 2(a), California Rules of Court.

Dated: June 4, 1990.

/s/ John Eshleman Wahl
JOHN ESHLEMAN WAHL
Attorney for
Plaintiff LILLIAN
CRAM

(COPY FROM PAGE 285 OF CLERK'S TRANSCRIPT)

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Attorney for Plaintiff
LILLIAN CRAM

ENDORSED
FILED
San Francisco
County Superior
Court
JUN 4 1990
DONALD W.
DICKENSON,
Clerk
BY: B. HEYWOOD
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE CITY AND COUNTY OF SAN FRANCISCO

LILLIAN CRAM,
Plaintiff,

vs.

HUGH MAXWELL, etc.,
Defendant.

No. 892-701

JUDGMENT AFTER TRIAL

This matter having been tried before the Honorable RICHARD P. FIGONE, Judge, and a Statement of Decision having been made and filed on May 21, 1990, Judgment is ordered as follows:

IT IS ORDERED, ADJUDGED AND DECREED that defendant HUGH S. MAXWELL holds the real property commonly known as 436 San Bruno Avenue, in the City and County of San Francisco, State of California, in trust for plaintiff LILLIAN CRAM, and the title to the said real property shall be conveyed in fee to plaintiff LILLIAN CRAM as her sole property. The said real property is more particularly

described as follows:

All that property in the City and County of San Francisco, State of California, described as follows, and together with imporvements thereon:

COMMENCING AT A POINT ON THE WESTERLY LINE OF SAN BRUNO AVENUE, DISTANT THEREON 225 FEET NORTHERLY FROM THE NORTHERLY LINE OF MARIPOSA STREET; RUNNING THENCE NORTHERLY AND ALONG SAID LINE OF SAN BRUNO AVENUE 25 FEET; THENCE AT A RIGHT ANGLE WESTERLY 100 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 25 FEET; THENCE AT A RIGHT ANGLE EASTERLY 100 FEET TO THE POINT OF COMMENCEMENT.

BEING PART OF POTRERO NUEVO BLOCK NO. 94.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the following items of personal property which have been listed by defendant HUGH S. MAXWELL on his the Inventory and Appraisement he filed in Probate Proceeding Number 247-521 in this Court, wherein he is Executor, are held by defendant HUGH S. MAXWELL in trust for plaintiff LILLIAN CRAM, and these items shall be transferred to plaintiff as her

sole property:

1. All interest of decedent JACQUELYN FAY MAXWELL in furniture, fixtures, furnishings, and objets d'art at 436 San Bruno Avenue, San Francisco, California.

2. 2,000 shares of stock in Gay International corporation.

3. 529 shares of stock in Outpatient Services corporation.

4. 120 shares of stock in Epsco, Inc.

5. 3,500 shares of stock in Futuretek Communications

corporation.

6. 300 shares of stock in Great American First Savings Bank of San Diego.

7. 12 shares of stock in MLK Corp.

8. 100 shares of stock in Pepsico, Inc.

9. California Municipal Bond #720294, Cusip #Q30617QT3, Maturity date 3/1/89 (Wells Fargo Trading Group), having a value of $20,335.11 with accrued interest, on the said Inventory and Appraisement.

10. Savings account at Patelco Credit Union #75906, having a value of $881.94 on the said Inventory and Appraisement.

11. Wells Fargo Bank savings account, having a value of $3,799.64 on the said Inventory and Appraisement.

12. Wells Fargo Bank checking account #0006-374599, having value of

$9,079.68 on the said Inventory and Appraisement.

Dated: June 4, 1990.

RICHARD P. FIGONE
JUDGE OF THE
SUPERIOR COURT

(COPY FROM PAGE 288 OF CLERK'S TRANSCRIPT)

Proof of Service

I am over the age of 18, and am not a party to the within action, and am employed in the City and County of San Francisco, California, at 1232 Market Street therein; on June 4, 1990, the day this is executed at San Francisco, California, I placed a true copy of the foregoing SERVICE OF FILE-STAMPED COPY OF JUDGMENT, with attached file-stamped copy of JUDGMENT AFTER TRIAL in a sealed envelope, with first-class postage thereon, in the United States mail at San Francisco, California, addressed to KEN A. CHAN, Esq., 2500 Clay Street, San Francisco, CA 94115. I declare under penalty of perjury that the foregoing is true.

/s/ John Eshleman Wahl

JOHN ESHLEMAN WAHL

(COPY FROM PAGE 294 OF CLERK'S TRANSCRIPT)

KEN A. CHAN
2500 Clay Street
San Francisco, CA 94115
415/922-0557

Attorney for Defendant
HUGH S. MAXWELL

FILED
San Francisco
County
Superior Court
AUG-7 1990
DONALD W.
DiCKNSON,
Clerk
BY [illegible]
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

LILLIAN CRAM,
Plaintiff,

vs.

HUGH S. MAXWELL, in his capcity as Executor of the Estate of Jacquelyn Fay Maxwell, Deceased,
Defendant.

No. 892701

NOTICE OF APPEAL (C.R.C. Rule 1(a))

AND RELATED CROSS ACTION

To the Clerk of the above-entitled court:

NOTICE IS HEREBY GIVEN that defendant HUGH S. MAXWELL, as executor of

the estate of JACQUELYN FAY MAXWELL, deceased, appeals from the judgment entered herein on June 4, 1990 and from any judgment for costs or other related matter which has become a part thereof.

Dated: June 27, 1990

/s/ Ken A. Chan

KEN A. CHAN, Attorney for Defendant HUGH S. MAXWELL

(COPY FROM PAGE 295 OF CLERK'S TRANSCRIPT)

I, the undersigned, say;

I am a person over 18 years of age and not a party to the within entitled action. I am employed and my business address is 2500 Clay Street, City and County of San Francisco, California. On this date June 29, 1990, I served a true copy of the document to which this declaration is affixed by placing said copy enclosed in a sealed envelope with postage fully prepaid and depositing said envelope in the United States mail at San Francisco, California, addressed to each address as shown below. I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California on June 29, 1990.

MAILED TO: JOHN ESHLEMAN WAHL
1232 Market Street, Suite 118
San Francisco, CA 94102

PAPERS MAILED: NOTICE OF APPEAL

/s/ Ava Mackaoui

Declarant,
Ava Mackaoui